IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5302 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNABEN PARESHCHANDRA PATEL - Appellant(s)
Versus
GOVINDBHAI CHUNILAL PRAJAPATI & 3 - Defendant(s)

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Appearance :

MR NALIN K THAKKER for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS MEGHA JANI for Defendant(s) : 2,
RULE SERVED BY DS for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Mr. Nalin K. Thakker for the appellant states that respondent no.2-The New India Assurance Co. Ltd. was served on 24th November, 2006. It is also stated that the said insurance company was served at Popular House, fifth floor, Ashram road, Ahmedabad. Mr. Thakker stated that affidavit to that effect is also filed and therefore, seeks leave to amend the cause title for giving the present address of respondent no.2. Leave as prayed for is granted.

Mr. Thakker also states that he be permitted to give detailed addresses of respondents no. 3 and 4. Permission is granted. The cause title shall be accordingly amended in the course of day itself.

2. This appeal has been filed by the original claimant no.3 of M.A.C.P. No.1258/1990 challenging the judgement and award dated 22nd November, 2000 passed by the Motor Accident Claims Tribunal(Main) at Vodadara.

3. Shortly stated, facts leading to this appeal are as follows :

3.1 Husband of the present appellant(original claimant no.3) Pareshbhai, aged 30 years, was travelling on a Scooter on

26th May, 1990, going from Nadiad to Baroda. His brother Hareshbhai, aged 26 years, was travelling in the same Scooter as a pillion rider. It appears that while so driving, the Scooterists were following a truck bearing registration no. GRW 1969. When the truck suddenly applied break, the scooter collided with the truck and both the travellers received serious injuries and succumbed to such injuries. For the death of deceased Pareshbhai, his widow along with father of the deceased filed claim petition being M.A.C.P. No.1258/1990 before the Claims Tribunal. A separate claim petition being M.A.C.P. No. 1257/1990 came to be filed by the parents for the death of their second son Hareshbhai.

3.2 The Claims Tribunal considering the evidence on record came to the conclusion that the truck driver must have stopped the truck abruptly without showing proper signal which ultimately resulted into the unfortunate accident. The Tribunal was pleased to note that the opponent no.1 had not examined the truck driver to dispel the evidence produced by the claimants on record. Considering the facts of the case, Tribunal came to the conclusion that the driver of the truck was negligent to the extent of 80% in causing the accident whereas deceased Pareshbhai who was driving the Scooter was negligent to the extent of 20% in causing

the accident. With respect to the quantum of compensation, in M.A.C.P. No.1258/1990, widow of the deceased i.e. the present appellant had deposed before the Tribunal that her husband was earning an income of Rs.20,000/- to Rs. 25,000/- per annum by giving tuitions and was further earning Rs.5,000/- per month by rendering services as Manager in the factory owned and operated by the father of the deceased. The Tribunal however, believed the income of the deceased at Rs. 2,000/- per month. Taking into account the fact that the deceased was a graduate and possessed a degree of B.Sc., his future income was assessed at Rs.4,000/-per month. Taking the average of two figures, the Tribunal accepted the prospective income of the deceased at Rs.3,000/- per month. 1/3rd of the said sum was deducted for personal expenses of the deceased. Considering the age of the deceased being 30 years, the Tribunal adopted a multiplier of 17. Loss of dependency was worked out at Rs.4,08,000/-(Rs.2,000 x 12 x 17). To the said figure, Tribunal added Rs.10,000/- towards loss of expectation of life and Rs.2,000/- towards funeral expenses. Total compensation was worked out at Rs.4,20,000/- by the Claims Tribunal. However, considering 20% contributory negligence of the deceased himself, the Tribunal reduced the said amount by 20% i.e. Rs.84,000/- and worked out the total amount to be awarded to the claimants at Rs. 3,36,000/-. It is this

award that the original claimant no.3-widow of the deceased has challenged in this appeal.

3.3 It may be noted that in the claim petition being M.A.C.P. No.1257/1990 filed by the parents for death of their younger son, the Tribunal awarded a sum of Rs.1,20,000/- only.

4. Considering the nature of evidence on record, though in the appeal, appellant had also disputed the finding of the Tribunal with respect to contributory negligence of the deceased, learned advocate Mr. Thakker for the appellant did not seriously press the said contention. He however, focused his attention on quantum of compensation worked out by the Tribunal. He submitted that the deceased was a Science graduate. He possessed degree in B.Sc. with Chemistry with specialisation in Drugs/Dyes. Deceased was therefore, a qualified graduate. He was giving tuition to Science stream students and was earning Rs. 25,000/- per annum. In addition thereto, deceased was also rendering services in his father's factory and receiving salary of Rs. 5,000/- per month. He submitted that the Tribunal erred in discarding the oral testimony of the appellant only on the ground that the appellant after the accident did not have good relations with her in-laws.

5. Having heard learned advocate for the

appellant, we find that so far as question of contributory negligence is concerned, since no serious dispute is raised, conclusions reached by the Tribunal in this regard call for no interference.

6. With respect to the quantum of compensation however, we find that that the award passed by the Tribunal calls for certain modifications.

7. As noted earlier, it had been established on record that the deceased was a graduate and had degree of B.Sc. with Chemistry and Drugs/Dyes as a special subject. The deceased was thus a fairly educated person aged only about 30 years on the date of accident. He therefore, had ample opportunity to earn substantial amounts by giving tuitions to science stream students. Additionally, it ought to have been appreciated that father of the deceased also had a plastic factory. Present appellant i.e. widow of the deceased had also stated in her deposition that in the spare time, her husband was rendering services as a Manager in the factory of his father. Considering all these aspects of the matter, we find that the Tribunal erred in assessing the income of the deceased at Rs. 2,000/- per month. Considering the period during which the accident had taken place and taking into account several factors noted here-in-above, it would be appropriate to accept

Rs.3,000/- per month as income of the deceased on the date of accident. With his potential and age on his side, it can be seen that with passage of time such income would certainly increase. Thus, taking double of the said figure as future income of the deceased and taking the average of two figures, one may arrive at a figure of Rs.4,500/- per month as prospective income of the deceased. 1/3rd of the said amount shall have to be deducted for personal expenses of the deceased himself, leaving Rs.3,000/- per month or 36,000/- per annum for the family. Considering the age of deceased being 30 years on the date of accident, multiplier of 16 would be justified. Loss of dependency benefit therefore, can be worked out at Rs.5,76,000/- (36,000x16). To the said figure, one may add Rs.20,000/- for conventional sum of loss of estate and Rs.15,000/- towards loss of consortium and Rs. 5,000/- for funeral expenses. Thus, total computation of compensation would be worked out at Rs.6,16,000/-. Since we have not disturbed the findings of the Tribunal regarding 20% negligence of the deceased, who was driving the Scooter,in causing the accident, the aforesaid amount shall have to be reduced by 20% i.e. by Rs.1,23,200/- Thus claimants, would be entitled to receive a sum of Rs.4,92,800/- (6,16,000-1,23,200). This figure which we have worked out is within the claim amount of Rs. 5 lakhs claimed by the claimants before the

Tribunal.

8. We may notice that in the award, Claims Tribunal had provided for apportionment in the ratio of 2/3rd to the widow of the deceased and 1/3rd to the parents of the deceased. The Tribunal had granted entire amount of Rs. 5,000/- towards consortium to the widow of the deceased. We propose to maintain the same ratio of apportionment. Accordingly it is provided that out of the compensation of Rs.4,77,800/- (ignoring Rs.15,000/- towards consortium), a total of Rs. 1,60,000/- with proportionate interest shall be the share of the parents of the deceased i.e. opponents nos. 3 and 4 herein. Remaining amount i.e. 3,17,800/- from the compensation of Rs.4,77,800/- plus Rs.15,000/- towards consortium which comes to Rs.3,32,800/- with proportionate interest and entire costs will be the share of the widow of the deceased i.e. the appellant herein. Award of the Tribunal shall stand modified accordingly.

9. As per the award passed by the Claims Tribunal though the amount is to be realised with interest at the rate of 12% per annum, it is clarified that additional compensation being enhanced, i.e. Rs.1,51,800/-, by this judgement shall carry simple interest at the rate of 9% per annum from the date of claim petition till realisation.

10. Learned advocate Mr. Thakker submitted that perhaps the parents of the deceased are not even interested in receiving any further amounts towards compensation in the present case. It is therefore, clarified that upon execution of the modified award by the Claims Tribunal and upon notice of this judgement being served on opponents no. 3 and 4 herein i.e. the parents of the deceased, if either of them do not come forward to receive the additional amount of compensation being awarded under this judgement within a period of one month of date of receipt of such a notice from the Tribunal, the appellant herein shall receive entire amount of compensation which shall be paid over to the appellant by the Claims Tribunal.

11. Upon realisation of the enhanced amount of compensation with proportionate costs and interest, Claims Tribunal shall deposit 90% of the amount apportioned for the share of the widow and 50% of the amount from the share of parents of the deceased in fixed deposits with any nationalised bank for a period of five years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimants to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not to permit the bank accounts of the claimants to

be operated by any power of attorney holder other than a close relative of the claimants.

Rest of the amounts shall be paid over to the claimants through Account Payee Cheques after due verification and after informing them about the amounts being invested/disbursed and the terms and conditions of investment.

12. Thus the First Appeal is disposed of in terms of above order.

(M.S.Shah,J,)

(Akil Kureshi, J.)

(raghu)